

Court Enforces Exclusion for Amounts Due Under Insurance Policy

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In an unreported decision, a federal district court, applying Georgia law, has held that an exclusion in a professional liability policy issued to an insurer for amounts due under any insurance policy precluded coverage for the settlement of a class action law suit alleging that the policyholder had wrongfully denied coverage for claims. *Ga. Farm Bureau Mut. Ins. Co. v. Great Am. Excess & Surplus Ins. Co.*, 2005 WL 1459649 (M.D. Ga. June 20, 2005).

The insured requested coverage for a class action lawsuit by holders of its automobile insurance policies who sought extracontractual damages for the allegedly improper denial of coverage for the diminished value of damaged vehicles after repairs. The insurer denied coverage based on an exclusion in the policy for any loss "in connection with" a claim "for benefits, coverage or amounts due or allegedly due, including any amount representing interest thereon, from the Insured as an insurer or reinsurer, under any policy or contract or treaty of insurance, reinsurance, suretyship, annuity or endowment." The underlying litigation settled for \$29.4 million and coverage litigation ensued.

The court held that the unambiguous language of the exclusion precluded coverage for the class action settlement. After noting that the exclusion was quite broad (extending to any loss "in connection with" a claim for benefits or coverage), the court reasoned that the extracontractual damages paid to the class members were connected or related to the underlying claim for benefits because the insured's failure to pay the benefits caused its obligation to pay attorneys' fees or bad faith penalties. Absent a contractual duty to pay benefits, the insured owed no liability for the alleged extracontractual damages.

The court also noted that, despite its breadth, the exclusion does not foreclose coverage in all situations. In the context of claims handling and adjusting, liability might arise "unconnected to claims for benefits or contractual obligation." Moreover, the policy covered errors and omissions "in the performance of other professional services, such as safety inspections, loss control, and safety engineering." The court concluded by noting that Georgia law permits an insurance company to "fix the terms of its policies as it sees fit, so long as such terms are not contrary to law," and that, here, "[t]here has been no showing that the policy's exclusions were contrary to law."

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